IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1211 OF 2006

IN

FIRST APPEAL ST. NO. 3612 OF 2006

Harshad Himatlal Rupani. .. Applicant.

vs.

M/s. Electro Steel

Casting Ltd., .. Respondents.

Harshad Rupani in person.

Mr. Haresh Pandya a/w Ms. T. Pushna i/by Khaitan & Co. for Respondent No. 1.

Mrs. G.P. Mulekar, AGP., for Respondent No. 2.

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CORAM: J.N. PATEL &

A.A. SAYED, JJ.

DATE: 14TH AUGUST 2007.

P.C.

. The applicant has filed this application and has sought leave to prosecute the appeal as an 'indigent person'. The matter was referred by the Court to the Registrar General to inquire into the claim of the applicant.

2. As directed by this Court, the Registrar (Judicial-I) conducted an enquiry into the matter and arrived at a finding that the applicant cannot be considered as an ’indigent person’ having no means to deposit the court fee.

3. The applicant has filed his exception to the report.

4. We have heard the applicant in person, the learned counsel for respondent no. 1 and the learned A.G.P.

5. It is the case of the applicant that he has no sufficient means to pay the court fee and though he is registered as "A" Class contractor with the State Government and has executed works worth crores of rupees, all his moveable and immovable assets are hypothecated / mortgaged and he is surviving on being maintained by his sister who is residing in Canada.

6. In reply it has been brought to our notice by the learned AGP that the applicant has received crores of rupees from his work of contracts which is reflected in a tabular form statement tendered in the Court and that he has not offered any explanation as to where the moneys have gone. Similarly, the learned counsel for respondent no.1 submitted that the applicant has

received remittances from abroad from his sister and huge amounts running into lacs of which he has given no accounts and according to the learned counsel for respondent no. 1 and the learned AGP., the applicant has suppressed his income in order to make out a case for seeking exemption from paying court fee for conducting the appeal.

7. The applicant has placed reliance on various authorities in support of his contention on the issue of interpretation of the words "sufficient means", interpretation relevant to production of certain information or document and also on the concept of ’indigent person’. We find that for the purpose of considering whether the applicant should be permitted to prosecute the appeal as an ’indigent person’ we need not go through the authorities in detail as we have no quarrel over the issues. The point which has to be determined by this Court is whether the applicant be held to be an ’indigent person’ who does not have sufficient means to pay the court fee.

8. It is not disputed by the applicant that he is registered as "A" Class contractor and has received bills for the works executed by him. What he has tried to present before the Registrar and is being reiterated before this Court is that all his assets moveable and immovable are either hypothecated or mortgaged and he is surviving on being maintained by his sister in

Canada. Taking into consideration the payment received by the applicant out of various contracts executed by him in the years 2004, 2005 and 2006 and the fact that the applicant has sufficient assets which has come on record through the enquiry, it cannot be said that the applicant is an 'indigent person'. The plea taken by the applicant that all his moveable and immovable assets are hypothecated / mortgaged to financial institutions cannot be accepted so as to mean that he has no sufficient means to pay the court fees which is determined at Rs. 3 lacs when the record shows that the applicant is a "A" Class contractor of the State Government and has got various contracts worth crores of rupees which are being executed.

9. On our specific query as to whether the applicant has approached the Court by getting him declared as insolvent, it is stated that it is not necessary as all his moneys are stuck up in litigation.

10. We, therefore, do not find, considering the status of the applicant, who is a "A" Class contractor, who claims to be the highest tax payer since the year 2000, to be a person without sufficient means to pay the court fee of the sum of Rs. 3 lacs. Therefore, his application to prosecute the appeal as an 'indigent person' is rejected. The applicant is directed to deposit the court fee within two weeks. On his failure to deposit the court fee within the aforesaid period,

the appeal would stand dismissed.

11. The Civil Application stands disposed of accordingly. No order as to costs.

(J.N. Patel, J.)

(A.A. Sayed, J.)